1987

Rudolfo Godoy v. Farmers Insurance Group, Mid-Century Insurance Company, Prematic Service Corporation, John L. May : Brief of Appellant

Utah Court of Appeals

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IN THE SUPREME COURT OF THE STATE OF UTAH

RUDOLFO GODOY, Plaintiff/Appellant, v. FARMERS INSURANCE GROUP; MID-CENTURY INSURANCE COMPANY; PREMATIC SERVICE CORPORATION; and JOHN L. MAY, Defendants/Appellees.	)	No. 870390-CA ~~870238~~ 14b

ON APPEAL FROM THE ~~UNITED STATES~~ Third DISTRICT COURT

FOR THE ~~DISTRICT~~ State OF UTAH

BRIEF OF APPELLANT

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THE SUPREME COURT OF THE STATE OF UTAH

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The summary judgment of the Third Judicial District Court of Salt Lake County, State of Utah is unreported, and contained in the Transcript of Record. (R. 332)

JURISDICTION

The judgment of the Third District Court was entered June 9, 1987. Notice of Appeal was filed on June 17, 1987 and was granted on July 21, 1987. The jurisdiction of this Court is invoked under Utah Code Ann. § 78-2-2(3)(i).

STATUTES INVOLVED

The texts of the following statutes relevant to the determination of the present case are set forth in the Appendix: Utah Code Ann. §§ 31-41-14 to 31-41-22 (1953 as amended). (The most recent changes to these sections are not included since the accident and facts involved in this case occurred in 1984 and 1985).

QUESTIONS PRESENTED

I. Whether the District Court erred in denying plaintiff's motion for partial summary judgment when the undisputed material facts revealed that plaintiff should prevail as a matter of law.

II. In the alternative, whether the District Court erred in granting defendants' motion for summary judgment when there existed genuine issues of material fact relating to the issues of effective cancellation, receipt of a payment providing coverage, waiver, and bad faith and when discovery was incomplete.

STATEMENT OF FACTS

On or about November 7, 1983, the plaintiff purchased an insurance policy from an agent of Farmers Insurance Group, Mid Century Insurance Company, and Prematic Service Corporation (Farmer's). (R. 1). The insurance policy became effective on November 7, 1983 and continued in effect by the payment of monthly premiums. (R. 1, 204). Plaintiff's initial payment was twice the usual monthly amount so coverage would continue one additional month in case of non-payment of a premium. (R. 204). The payment record shows Farmers accepted a late payment on at least one occasion. December's 1984 payment was made and accepted in January with January's payment. (R. 205) Plaintiff's wife on or about May 15, 1984 purchased a money order from the post office and sent that money order to Farmers Insurance Group in order to pay the May premium. (R. 3, 136-139).

On May 17, 1984, plaintiff was involved in an accident with John L. May, an uninsured motorist. (R. 3). Plaintiff applied for benefits under his Farmers Insurance policy on June 6, 1984 and received benefits under the policy for approximately four months following the accident. (R. 121, 123-126). On or about October 18, 1984, Farmers Insurance Group refused to pay for further lost wages and medical expenses, claiming for the first time that plaintiff's policy had expired for non-payment of premiums on May 15, 1987. (R. 128). After paying benefits for four months and then deciding to cancel, Farmer's printed a document showing the expiration date as May 15 (R. 178, 327) and threatened legal action against Mr. Godoy

if he did not pay back the benefits he had received and that Farmer's had paid to health care providers. (R. 128). Farmer's refused to pay Mr. Godoy's unpaid medical bills and because Mr. Godoy is unable to pay them his credit was and continues to be damaged. (R. 128). At the time Farmer's motion was granted, there was outstanding written discovery (R. 94) and Farmer's employees had not yet been deposed.

SUMMARY OF THE ARGUMENT

The District Court erred in denying plaintiff's motion for partial summary judgment. It is a well-established rule in Utah that an insurance company waives its rights to claim no coverage when its acts and conduct infer coverage. To hold otherwise would be to allow an insurance company to benefit from prejudicing an insured by inducing the insured to belief that a payment was accepted and a decision was made to provide coverage.

In the alternative, the District Court erred in granting defendants' motion for summary judgment on all issues. There existed genuine issues of material fact that preclude summary judgment as a matter of law.

First, there existed a question of material fact as to whether there had been an effective cancellation of the policy since the plaintiff received no such cancellation notice until months after the accident. Defendants themselves are confused as to when the required notice of cancellation was mailed.

Second, there existed a question as to whether defendants received the premium which would have provided coverage at the time

of the accident. At this point it is indisputable that plaintiff mailed to Farmer's on or about May 15 a premium payment. Farmers in not responding to factual allegations has admitted that payment was sent. There were outstanding requests for production of documents which were objected to by defendants. Those documents may have proved the acceptance of the premium payment in question.

Third, even if payment was not received, there existed an issue of material fact as to whether defendants acts and conduct in providing coverage constituted a waiver and hence would act to estop defendants from claiming non-coverage.

Fourth, there were genuine issues of material fact as to defendants bad faith in not continuing coverage and in threatening plaintiff with a lawsuit if benefits were not returned. Because of the factual nature of the bad faith issue, plaintiff originally moved only for a motion for partial summary judgment rather than a motion for summary judgment.

Fifth, discovery was not complete.

ARGUMENT

I. THE DISTRICT COURT ERRED IN REFUSING TO GRANT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT.

The principals surrounding the issue of waiver in an insurance setting have been long established and deeply imbedded in Utah decision. Loftis v. Pacific Mutual Life Insurance Co., 38 Utah 532, 114 P. 134, 137 (1911); Sullivan v. Beneficial Life Insurance Co., 91 Utah 405, 64 P.2d 351; Calhoun v. Universal Credit Co., 146 P.2d 284, 287 (Utah 1944).

In the case of Loftis, the insured purchased a life

insurance policy. Premium payments were to be deducted directly from the insured's earnings. Two timely monthly payments were made before the insured defaulted on two subsequent payments. The insured was killed during the third insurance period for which the premium had not been paid. Id. at 136. After the insured's death a payment was made which covered the defaulted period. The Utah Supreme Court held that since premiums were expected to be paid from a payroll deduction and since the insured's pay had fallen below the level necessary to make the monthly payments, the insurance company had waived its right to claim non-coverage. Id. at 139. The Court held them to be a waiver even though the policy itself provided that there could be no waiver of the terms of the policy unless in writing. Id. at 135. The Utah Supreme Court reasoned:

> That insurance companies may waive prompt payment of policies, although such payment is of the essence of the contract of insurance and may continue and treat policies in force after all rights thereunder had lapsed by reason of a provision therein that nonpayment of the premium or any part thereof shall cause the policy to become void and of no force or effect, is too well settled to admit of dispute.

Id. at 137. (Emphasis added). Additionally, the court cited 2 Joyce on Insurance § 1356 as well as other treatise as "the overwhelming weight of authority." Id. at 138:

> If an insurance company or its authorized agent, by its habits of business or by its acts or declarations, or . . . by any court of conduct, has induced an honest belief in the mind of the policy holder, which is reasonably founded, that strict compliance with the stipulation for punctual payment of premiums will not be insisted upon, ...it will be deemed to have waived the right to claim forfeiture, or it will be estopped from enforc-

> ing the same although the policy expressly provides for forfeiture for nonpayment of premiums as stipulated . . . .

Id. at 138.

With respect to the insurance companies argument that they did not know of the lapse in the policy when they accepted a three month old back payment, the Utah Supreme Court, stated, "'when an act of commission or omission is of such a character as to preclude the idea of ignorance, knowledge must be presumed. It is difficult to perceive how the defendant or its authorized agent could have supposed the amount was paid, when neither had received it.'" Id. at 140.

The comparison between the facts in Loftis and the facts in the present case is readily apparent. The plaintiff in the present case also purchased an insurance policy and began making payments as prescribed by the policy. At one point plaintiff mailed in a premium which was claimed to not have been received by the insurance company. The insurance company treated the policy as if in force and paid benefits under the policy. These payments "induced an honest belief in the mind of the policy holder," Id. at 138, that the policy was in force. Even if the premium mailed on or about May 15 were argued to be a few days late, Farmers had accepted a payment one month late in the past. There was no reason to believe Farmers had not accepted this payment. In reliance on that reasonably founded belief, the plaintiff did not safeguard his receipts of payment of the premium and sought needed medical assistance which he could not otherwise have afforded to do.

The application of the principle of waiver exists even when the policy specifically provides that there will be no waiver of any terms of the policy. Loftis at 138; Ellerbeck v. Continental Casualty Co., 63 Utah 530, 532, 227 P. 805, 807 (1924); Calhoun at 286; Sullivan at 360.

Additionally, the Utah Supreme Court has consistently pronounced that a "liberal interpretation" must be given to the acts and conduct of a party holding a right of forfeiture:

> Any acts or statements suggesting an intention to keep a contract alive are liberally construed as a waiver of the right of foreclosure.

Pollock v. New York Life Insurance Co., 691 F.2d 961, 965 (10th Cir. 1982), citing, Parker v. California State Life Insurance Co., 85 Utah 595, 40 P.2d 195, 177 (1935); see Loftis at 140.

Jurisdictions and authorities other than the Utah Supreme Court add additional weight to the proposition that an insurance company, by its acts and conduct, may waive certain defenses.

Couch on Insurance 2d § 71:22 for example states that, "As a general rule, acts and conduct of an insurer after a loss has occurred which are inconsistent with a particular defense, especially where the insured has been induced to act, or acts which would lull the insured into believing that he is covered, will constitute a waiver of the defense." Id. [Footnote citations omitted.]

In the present case, paying benefits under a policy for a period of four months was inconsistent with the defense that the policy was cancelled because of failure to pay a given premium.

Certainly not each time an insurance company makes an inadvertent benefit payment would they be required to hold the policy in force. But, where the insurance company has adequate time to investigate and where an insured has a reasonable expectation of coverage, the insurance company should be required to plead defenses only consistent with their acts and conduct over a period of time.

The Utah Supreme Court has relatively recently supported the proposition that an insurance company must diligently investigate and "act promptly and reasonably in rejecting or settling the claim." Beck v. Farmers Ins. Exchange, 701 P.2d 795 (Utah 1985). In the present case, the accident occurred on May 17, 1984. (R. 114). Plaintiff filed for benefits under his policy on June 6, 1984 (R. 121). He received benefit payments for four months from the time of his accident. (R. 123-126). Farmer's uses a computer system that keeps up-to-date daily information on the status of its insureds. (R. 178). The insurance company could have easily met the Beck requirement of prompt action and investigation. Rather, it paid benefits under the policy, lulled plaintiff into a sense of security regarding keeping documentation of premium payments, and then four months after the accident claimed no coverage, and refused to pay medical bills. This is inconsistent with the spirit and letter of Beck.

Therefore, it is urged that the Supreme Court of Utah in keeping with its previous decisions, reverses the District Court and instructs the District Court to enter partial summary judgment for

plaintiff.

II. IN THE ALTERNATIVE, THE DISTRICT COURT ERRED IN GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

In general, the Utah Supreme Court has held that summary judgment is a harsh measure and opposing party's contentions are to be considered in a light most favorable to him. W.W. & W.B. Gardner, Inc. v. Mann, 680 P.2d 23, 24 (Utah 1984). Additionally, summary judgment should only be granted when it clearly appears there is no reasonable probability the opposing party could prevail. Snyder v. Merkley, 693 P.2d 64, 65 (Utah 1984). Under these established standards, the District Court's grant of summary judgment for the defendants should be reversed.

A. A genuine issue of material fact existed as to whether defendants effectively cancelled the policy by merely alleging to have timely mailed a notice of cancellation, when policy provided specific procedures for cancellation.

It is important to note at the outset of a discussion regarding the interpretation of an insurance policy's provisions that where there is any uncertainty or ambiguity in the terms of any specific policy, they should be construed in favor of the insured since he did not draft the documents. Williams v. First Colony Life Insurance Co., 593 P.2d 534 (Utah 1979). If an insurance policy is ambiguous or uncertain in any respect, so that it is susceptible to different interpretations, any doubt should be resolved in favor of insurance coverage. W.W. & W.B. Gardner, Inc. v. Park West Village, Inc., 568 P.2d 731 (Utah 1977); Couch on Insurance 2d § 15:83 (citing numerous cases).

The applicable notice statute in effect at the time of the

accident in question requires "ten days notice of cancellation . . . ." U.C.A. § 31-41-16 (1953). The policy, although somewhat ambiguous, requires also ten days notice of cancellation. Therefore, it becomes crucial to know when the notice of cancellation was mailed and when it was received. Even though U.C.A. § 31-41-19 establishes that proof of mailing is deemed proof of notice, the statute does not state when the ten days begins to run. Defendants claim notice was mailed sometime after May 1, but are uncertain as to the exact date. (R. 187). In various places the defendants admit that the notice of cancellation was not mailed until at the earliest, May 1, 1984, 17 days prior to the accident. (R. 327). In a letter which was produced as part of defendants compliance with plaintiff's request for production of documents, an insurance representative stated that on May 18, 1984, a bill and final notice was sent. (R. 327). If that bill was in fact sent on May 18, 1984, the policy would have remained in effect based on the provisions of the policy itself, at least until late May or early June. That is consistent with the plaintiff's affidavit in which he stated that he had received no notice of cancellation until at least a month after the accident.

This is also consistent with Farmer's answer to plaintiff's interrogatories wherein it stated that "the precise date of mailing is unknown; however, it is the practice of Prematic Service Corporation to mail the notice of cancellation--non-payment of premium during the first of the month and is believed that this notice of cancellation with cancellation 5/15/84 was mailed during

the first few days of May." (R. 325). The question of cancellation raises two important issues. First, it raises a question as to what the policy actually provided in terms of a notice requirement prior to cancellation. Second, the time and manner of notice are in question. The undated notice that was allegedly mailed to the plaintiff provided that the policy would cancel on a specific date regardless of when it was mailed or received. (R. 130). If notice of cancellation was sent on or about May 1, then why did Farmer's proceed to pay benefits? Mr. Godoy says the notice was mailed much later. Was it mailed after Farmer's and its attorney decided to cancel the policy later that year?

Cases have held that issues surrounding the lapse and notice of lapse of an insurance policy are material issues of fact which are best resolved before a jury. Daugherty v. Wabash Life Insurance Co., 482 P.2d 814 (Nev. 1971); Hartsfield v. Carolina Casualty Insurance Co., 411 P.2d 396 (1966); Richmeier v. Williams, 9 Kan. App. 2d 222, 675 P.2d 372 (1984). In Richmeier, although adopting a minority rule that notice must actually be received by the insured before the policy may validly be cancelled, stated the same conclusion that majority jurisdictions follow with respect to the notice requirement that "whether the notice was given and received is a material question of fact. The question is unresolved; therefore summary judgment was not proper." Id. at 375.

In Hartsfield, the Supreme Court of Alaska held that under a cancellation clause, even though mailing of notice of cancellation to an insured was a prerequisite to effective cancellation of a

policy, denial of receipt of notice of cancellation rebutted the prima facia case of mailing and created an issue of fact that must be resolved by the trier of facts. Hartsfield, 411 P.2d at 397.

In a like manner, the issue of the effectiveness of cancellation of an insurance policy presents an issue of fact that must go before the trier of fact. The defendant claims to have mailed a timely notice of cancellation, but the plaintiff has rebutted this prima facia evidence by claiming that no notice was received until well after the accident.

B. A genuine issue of material fact exists as to whether the defendants acts constituted a waiver of their rights to claim non-coverage.

In Highlands Insurance Co. v. Allstate Insurance Co., 688 F.2d 398 (5th Cir. 1982), the court explained that waiver is usually a question of fact to be determined by the jury or, in a bench trial by the court. Id. at 404. Furthermore, the court explained that:

> Even "slight circumstances" will support a finding that an insurer has waived a forfeiture clause in an insurance policy. For "courts liberally construe in favor of an insured's acts or circumstances by the insurer indicating an intention to waive a forfeiture."

Id. This conclusion is supported by Utah case law which states that whether a waiver has taken place or not "ordinarily depends upon the peculiar facts and circumstances of a given case, and, in most instances, presents a question of fact, rather than of law, or at least a mixed question of fact and law." Pollock v. New York Life Insurance Co., 691 F.2d 961 (10th Cir. 1982), quoting Loftis, 114 P. at 139.

In the present case, the material facts which are in

dispute as to whether a waiver occurred are whether by paying benefits to the plaintiff over a four month period, an insurance company has induced reliance and hence waived its right to later claim non-coverage. Reasonable minds may differ as to whether such acts by an insurance company would induce a reasonable man to believe that insurance coverage would be provided. Mr. Godoy's credit was damaged when he was unable to pay his medical bills. In reliance upon the insurance company's acts and conduct, Mr. Godoy received necessary medical attention which he would not have attempted to receive had he not been induced into believing that coverage would be provided. Additionally, because coverage was provided for such an extended period of time, he failed to safeguard his various receipts of premium payments which would have established his eligibility for benefits under the policy.

Because of these factual disputes, which are material to the issues of waiver, summary judgment was wrongfully granted in the court below in favor of the defendants.

C. A genuine issue of material fact exists as to whether the defendant actually received a payment providing coverage at the time of the accident.

A factual dispute relating to the payment or tender of premiums is the type of material issue of fact which must be resolved by the trier of fact. Daugherty, 482 P.2d at 815.

Additionally, U.C.A. § 31-41-19 provides that proof of mailing is sufficient proof of notice of cancellation. If the insurer could allege notice by proof of mailing, then justice would also require that the insured could establish coverage by proof of

mailing. Thiessens v. Department of Employment Sec., Bd. of Review of Indus. Comm'n of Utah, 663 P.2d 72 (Ut. 1983). (Stating that mailing of a letter postage prepaid and properly addressed creates an inference that the letter reached its destination.)

In the present case, the plaintiff and his wife both signed affidavits that payment to provide coverage during the accident was properly stamped, addressed and mailed to defendants. (R. 136, 138-139). According to Thiessens, this creates an inference that defendants received that payment. As of yet, defendants have brought forth no evidence to rebut this presumption. In fact, defendants have admitted that payment was made by not denying specific paragraphs of Plaintiff's Motion for Partial Summary Judgment. (R. 301, 302).

Therefore, at a minimum, the issue of payment raises a question of fact which must be resolved by a trier of fact. James Talcott, Inc. v. Reynolds, 529 P.2d 352, 65 Mont. 404 (1974), (stating that when an addressee denies receipt, the question is left to a determination by a jury).

D. There is a question of fact as to bad faith.

As cited above under Beck v. Farmers, failure to act reasonably and promptly in rejecting a claim can constitute bad faith. In this case there is at least a question of fact whether Farmer's acted reasonably and promptly in rejecting the claim after paying benefits for four months. Especially when it printed a document after paying benefits showing cancellation was two days before the accident and threatened Mr. Godoy with suit if he did not

return benefits it had paid even though Farmer's knew that most of the benefits had gone to pay for health care providers which Farmer's had given Mr. Godoy permission to use.

E. The District Court erred in granting defendants' motion for summary judgment since discovery had not yet been completed.

In the case of Auerbach's, Inc. v. Kimball, 572 P.2d 376 (Utah 1977) the Utah Supreme Court held that a grant of summary judgment is premature where discovery is not yet complete, since the non-moving party claimed that further discovery would provide facts sufficient to defeat the motion for summary judgment. Also, in Cox v. Winters, 678 P.2d 311 the Utah Supreme Court held that the trial court abused its discretion in granting summary judgment by denying a party the opportunity to conduct further discovery.

Likewise, in the present case, there were outstanding discovery requests which would have provided facts sufficient to defeat the motion for summary judgment. This was pointed out in Mr. Godoy's memorandum opposing summary judgment. (R. 309, 310). Plaintiff had requested that defendants produce documents relating to the decision to deny coverage. (R. 289). Defendants objected to this request and therefore forced plaintiff to file a motion to compel. (R. 288). The documents not produced would have tended to show first, whether defendants had received plaintiff's premium payment; second, when the defendants knew they were going to deny coverage; and three, why the defendants did not provide coverage. These facts, if substantiated, could have been used to defeat the motion for summary judgment. The District Judge erred in granting

summary judgment when there were such outstanding discovery to be completed.

CONCLUSION

For all of the foregoing reasons, the judgment of the Third District Court of the State of Utah should be reversed and plaintiff's Motion for Summary Judgment should be granted. In the alternative, the judgment should be reversed and remanded for proceedings on the merits.

Respectfully Submitted,

CHRISTENSEN, JENSEN & POWELL, P.C.

By _____
Denton M. Hatch
Attorney for Rudolfo Godoy

CERTIFICATE OF SERVICE

This is to certify that on this 31st day of August, 1987, a true and correct copy of Brief of Appellant was mailed, postage prepaid, to:

Aaron Alma Nelson
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Connie Loveridge

arrest of a person for violation of and conviction under this act; authorizing political subdivisions within the state to adopt ordinances and regulations consistent with this act; and providing an effective date.—L. 1974, ch. 10.

Effective Date.

Section 3 of Laws 1974, ch. 10 provided that the act should take effect upon approval. Approved February 13, 1974.

Collateral References.

Automobiles⊂⊃6.

60 C.J.S. Motor Vehicles § 23.

7 Am. Jur. 2d 606, Automobiles and Highway Traffic § 13.

See Am. Jur. 2d, No-Fault Insurance §§ 1-34, when published.

Validity and construction of "no-fault" automobile insurance plans, 42 A. L. R. 3d 229.

Validity of Motor Vehicle Financial Responsibility Act, 35 A. L. R. 2d 1011.

Law Reviews.

No-Fault Automobile Insurance in Utah —State Constitutional Issues, 1970 Utah L. Rev. 248.

Compensation Systems and Utah's No-Fault Statute, 1973 Utah L. Rev. 383.

Countrywide Overview of Automobile No-Fault Insurance, 23 Defense L. J. 443 (1974).

ARTICLE 2

CANCELLATION OF POLICIES

31-41-14. Definition of terms.—As used in this act:

(1) "Policy" means an automobile insurance policy providing coverage for any or all of the following coverages: Collision, comprehensive, bodily injury liability, property damage liability, medical payments, and uninsured motorist coverage, or any combination of them delivered or issued for delivery in this state, insuring a single individual, husband and wife, or family members residing in the same household, as the named insureds. The insured vehicles designated in the policy must be of the following types:

(a) All motor vehicles of the two or four door sedan type, including station wagons and sports cars, that are not used to transport goods or persons for hire in the regular course of business; or

(b) Any other four-wheel motor vehicle with a load capacity of 9,000 pounds or less which is not used in the occupation, profession, or business of the insured.

(2) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy

previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of the policy beyond its policy period or term; but any policy with a policy period or term of less than twelve months shall for the purpose of this act be considered as if written for a policy period or term of twelve months; and any policy written for a term longer than one year, or any policy with no fixed expiration date, shall, for the purposes of this act, be considered as if written for successive policy periods or terms of one year, and such policy may be terminated at the expiration of any annual period upon giving thirty days' notice of nonrenewal prior to such anniversary date, and such nonrenewal shall not be subject to any other provisions of this act.

(3) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on the policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent, or indirectly under any premium finance plan or extension of credit, or in connection with the payment of any membership fees or dues to an association or organization, other than an insurance association or organization, where the payment of such fees or dues is a prerequisite to obtaining or continuing insurance in force.

History: L. 1973, ch. 56, § 1.

Title of Act.

An act relating to the cancellation of automobile insurance policies; providing certain conditions under which the insurer may cancel the policy or fail to renew it after proper and timely notice has been served on the insured; absolving the insurance commissioner and insurer from liability arising out of any cancellation; exempting policies written under the assignment of risk provisions of section 41-12-35; and providing an effective date. —L. 1973, ch. 56.

Cross-Reference.

Automobile liability policies, 41-12-35.

31-41-15. Notice of cancellation of policy—Requirements for validity—Exceptions.—(1) A notice of cancellation of a policy shall be valid only if it is based on one or more of the following reasons:

(a) Nonpayment of premium; or

(b) The driver's license or motor vehicle registration of either the named insured or any operator who customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period, or if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date; or

(c) The applicant knowingly made a false statement on the application for insurance.

(2) This section does not apply to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.

(3) This section does not apply to the nonrenewal of a policy.

History: L. 1973, ch. 56, § 2.

Collateral References.

Insurance⇨228(1).
45 C.J.S. Insurance § 450.
43 Am. Jur. 2d 444, Insurance § 399.

Cancellation of compulsory or "financial responsibility" automobile insurance, 171 A. L. R. 550, 34 A. L. R. 2d 1297.

Insurance agent's statement or conduct indicating that insurer's cancellation of policy shall not take effect as binding on insurer, 3 A. L. R. 3d 1135.

Liability of insurer, under compulsory statutory vehicle liability policy, to injured third persons, notwithstanding insured's failure to comply with policy conditions, as measured by policy limits or by limits of Financial Responsibility Act, 29 A. L. R. 2d 817.

Remedies and measure of damages for wrongful cancellation of liability and property insurance, 34 A. L. R. 3d 385.

31-41-16. Notice of cancellation of policy—Time for mailing or delivery—Request for reason for cancellation—Exception.—(1) No notice of cancellation of a policy to which section 31-41-15 applies shall be valid unless mailed or delivered by the insurer to the named insured at least twenty days prior to the effective date of cancellation. Where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reason therefor must be given.

(2) Where the reason for cancellation is not included with the notice of cancellation, the insurer, upon written request of the named insured mailed or delivered to the insurer not less than fifteen days prior to the effective date of cancellation shall specify in writing the reason for such cancellation, which reasons shall be mailed or delivered to the named insured within five days after receipt of request.

(3) This section does not apply to the nonrenewal of a policy.

History: L. 1973, ch. 56, § 3.

45 C.J.S. Insurance § 450.
43 Am. Jur. 2d 450, Insurance § 405.

Collateral References.
Insurance⇐229(1).

31-41-17. Nonrenewal of policy—Time limit for mailing or delivery of notice of intention—Exceptions—Termination on effective date of other insurance—Renewal not waiver of grounds for cancellation—Request for reason for nonrenewal.—(1) No insurer shall refuse to renew a policy unless this insurer or its agent shall mail or deliver to the named insured, at the address shown in the policy, at least thirty days' advance notice of its intention not to renew. This section shall not apply:

(a) Where the insurer has manifested its willingness to renew.

(b) Where there has been nonpayment of premium.

(c) Where the insured fails to pay any advance premium required by the insurer for renewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy covering the same automobile.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed prior to the effective date of the renewal.

(4) In the event an insurer refuses to renew, the insured by written request may demand a written notification of the reason or reasons for nonrenewal. Notification must be given the insured within twenty days after receipt of such request.

History: L. 1973, ch. 56, § 4.

Provision of policy for mailing of notice to insured's address as stated therein, as affected by change of address, 63 A. L. R. 2d 570.

Collateral References.
Insurance⇐145(4).
44 C.J.S. Insurance § 283.
43 Am. Jur. 2d 427, Insurance § 379.

31-41-18. Discriminatory practices in cancellation or nonrenewal prohibited.—No insurer shall cancel or refuse to renew a policy of automobile insurance on any person with at least two years' driving experience solely because of the age, residence, race, color, creed, national origin, ancestry or lawful occupation (including the military service) of anyone who is insured or solely because another insurer has refused to write a policy, or has canceled or has refused to renew an existing policy in which that person was the named insured.

History: L. 1973, ch. 56, § 5.

Cross-Reference.

Unfair or deceptive acts or practices, 31-27-1 et seq.

Collateral References.

Insurance⇐4.
44 C.J.S. Insurance § 59.
43 Am. Jur. 2d 108, Insurance § 52.

31-41-19. Proof of mailing deemed proof of notice.—Proof of mailing to the named insured at the address shown on the policy of the notice of cancellation, the intention not to renew, or of reasons for cancellation shall be sufficient proof of the notice.

History: L. 1973, ch. 56, § 6.

Collateral References.

Provision of policy for mailing of notice to insured's address as stated therein, as affected by change of address, 63 A. L. R. 2d 570.

31-41-20. Cancellation or nonrenewal of bodily injury and property damage liability coverage—Notice to insured of assigned risk plan.—When bodily injury and property damage liability coverage is canceled other than for nonpayment of premium, or in the event of failure to renew the bodily injury and property damage liability coverage in which section 31-41-17 applies, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance through the assigned risk plan set forth in section 41-12-35 and where he may obtain information concerning such plan. This information shall accompany or be included in the notice of cancellation or the notice of intent not to renew.

History: L. 1973, ch. 56, § 7.

31-41-21. Commissioner or insurer absolved from liability for notice pertaining to cancellation or nonrenewal.—There shall be no liability on the part of the commissioner of insurance or any insurer, its authorized agents, or representatives, or any person, firm, or corporation furnishing to the insurer any notice or information pertaining to cancellation or nonrenewal of any policy.

History: L. 1973, ch. 56, § 8.

Collateral References.

Constitutional Law⇐70(1)p.
16A C.J.S. Constitutional Law § 464.
63 Am. Jur. 2d 810, Public Officers and Employees § 304.

31-41-22. Policies not covered by act.—This act shall not apply to any policy issued under an assigned risk plan set forth in section 41-12-35 or to any policy insuring more than four automobiles, or to any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazard, or to any policy of insurance issued princi-

pally to cover the premises of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of motor vehicles on the premises of such insured, or on the ways immediately adjoining such premises.

History: L. 1973, ch. 56, § 9.

Effective Date.

Section 10 of Laws 1973, ch. 56 provided: "This act shall take effect on January 1, 1974, and shall apply to policies written or renewed on or after that date."

CHAPTER 42

HEALTH MAINTENANCE ORGANIZATIONS

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

RUDOLFO GODOY, Plaintiff, vs. FARMERS INSURANCE GROUP; MID-CENTURY INSURANCE COMPANY; PREMATIC SERVICE CORPORATION; and JOHN L. MAY,	SUMMARY JUDGMENT Civil No. C85-3136 JUDGE RICHARD H. MOFFAT

The Motion of Defendants Mid-Century Insurance Company and Prematic Service Corporation for Summary Judgment duly came before this Court for hearing on May 22, 1987, at 9:00 a.m. Plaintiff appeared through his attorney, Denton M. Hatch, and Defendants Mid-Century Insurance Company and Prematic Service Corporation appeared through their attorney, Aaron Alma Nelson. Prior to the hearing the parties submitted Memoranda which were considered by the Court along with all the other pleadings and records in the file. After hearing arguments by the parties and the Court being fully advised it is hereby

ORDERED, ADJUDGED AND DECREED that Defendants Mid-Century Insurance Company and Prematic Service Corporation are hereby granted Summary Judgment dismissing Plaintiff's action against

Farmers Insurance Group, Mid-Century Insurance Company and Prematic Service Corporation, with prejudice.

DATED this 7 day of June, 1987.

ATTEST
H. DIXON HINDLEY
CLERK
By K Christensen
Deputy Clerk

BY THE COURT:

RICHARD H. MOFFAT
DISTRICT JUDGE

CERTIFICATE OF MAILING

I caused to be mailed a true and correct copy of the foregoing proposed SUMMARY JUDGMENT, postage prepaid, this 7th day of May, 1987, to:

Mr. Denton M. Hatch
CHRISTENSEN, JENSEN & POWELL
Attorneys for Plaintiff
510 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101